



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

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LOS ANGELES, CALIFORNIA 90012-2713

July 21, 2003

LLOYD W. PELLMAN

County Counsel

TDD

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TELEPHONE

TELECOPIER

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **County of Los Angeles v. Thompson**
United States District Court Case No. CV 02-1238 (JDB)

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$660,000.00 to be paid to the County.
2. The Auditor-Controller be directed to accept payment to implement this settlement for the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

June 13, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ANITA D. LEE
Principal Deputy County Counsel
Public Services Division

RE: County of Los Angeles v. Thompson
United States District Court
Case No. CV 02-1238 (JDB)

AUTHORITY
REQUESTED: County will receive \$660,000

COUNTY
DEPARTMENT: Department of Health Services

CLAIMS BOARD ACTION:

<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	<input type="checkbox"/> Recommend to Board of Supervisors for Approval
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_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle litigation initiated by the County against the federal Department of Health and Human Services ("HHS") in connection with a dispute over the proper amount of reimbursement owed to three County hospitals for providing dialysis treatments to Medicare beneficiaries during fiscal years 1980-81 and 1981-82. Under this settlement, the County would receive a total of \$660,000.

LEGAL PRINCIPLES

Medicare has an obligation to reimburse hospitals for the outpatient dialysis services rendered to Medicare beneficiaries. The County contends that the statutes and regulations require such reimbursement to be based on the actual cost of providing the care. HHS contends that it is only obligated to pay costs up to certain administratively established limits.

SUMMARY OF FACTS

Three County hospitals requested Medicare reimbursement for the full cost of providing care to Medicare beneficiaries receiving outpatient dialysis during fiscal years 1980-81 and 1981-82. In each case, the Medicare fiscal intermediary disallowed that portion of the claimed costs which was in excess of certain payment screens. The County hospitals appealed to the Provider Reimbursement Review Board ("PRRB"), asserting that the payment screens were procedurally and substantively invalid and that they were entitled to payment of their actual costs. The PRRB accepted the County's arguments, invalidating the payment screens. However, its decision was reviewed by the Administrator of the Centers for Medicare and Medicaid Services, a division of HHS, and ultimately reversed. The Administrator found that the payment screens were both properly established and substantively correct, and, therefore, could serve as an appropriate basis for limiting the costs that Medicare would reimburse.

DAMAGES

The County hospitals' costs of providing the dialysis services ranged from \$232 per session to \$1,311 per session, depending on the facility and the fiscal year. The payment screens were approximately \$138 per session. The aggregate amount disallowed under the screens is approximately \$1,137,000.

STATUS OF CASE

The County appealed the Administrator's decision to District Court, and promptly entered into settlement negotiations. Both parties expect the case to be decided on cross-motions for summary judgment. Because the negotiations had not produced an acceptable offer before the Court-approved date for filing the

County's motion, the County filed its motion and its opening brief. HHS then made an offer to settle the case by paying a lump sum of \$660,000. This amount is intended to cover HHS' liability to all three hospitals for both fiscal years. The settlement offer did not differentiate between principle and interest, or among the eligible facilities. HHS further agreed to expedite payment with a goal of having it to the County in September, 2003.

Currently, the time for HHS to file its opposition and cross-motion is stayed to permit the parties to proceed with settlement discussions. HHS is seeking final administrative approval of the settlement terms while the County is also seeking final authority to accept the settlement.


EVALUATION

The County has strong arguments that the payment screens are invalid. However, it is less clear how the County's reimbursement would be calculated in the absence of the limits. HHS has indicated that it would assert a right to determine the extent to which the County's actual costs were reasonable, requiring remand of the matter to the PRRB. HHS further asserts that it is likely that, on remand, some, if not all, of the disputed costs would be determined to be unacceptable. To challenge these assertions would require substantial additional resources and could delay payment for years. Moreover, it is not clear that the County could justify all of its expenses, if required to do so, given the passage of time, and given the level of the original costs.

The proposed settlement gives one hospital its full actual costs for one year and almost doubles the amount received by each of the others. Moreover, federal law has changed, so there are no other cost years raising the same issue as in this case. Accordingly, it is not necessary to proceed to a decision in order to establish a precedent.

Given the uncertainty associated with further litigation, the size of the settlement offer and the delays attendant on pursuing this matter to a final decision by the Court, our office and the County Department of Health Services recommend settling this case under the terms specified above.

APPROVED:


LEELA A. KAPUR
Assistant County Counsel

ADL:lc